

# **EXHIBIT 1**

## **Declaration of Jacob B. Lee**

**EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

WILHEN HILL BARRIENTOS, et al.,

Plaintiffs,

v.

CORECIVIC, INC.,

Defendant.

Civil Action No. 4:18-cv-00070-CDL

**DECLARATION OF JACOB B. LEE**

I, Jacob B. Lee, state the following:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, could competently testify to these facts. I am counsel of record for Defendant CoreCivic in the above-captioned matter and provide this Declaration in support of CoreCivic's Motion for Payment of Expert Fees.

2. CoreCivic disclosed Joseph V. Penn, MD CCHP FAPA as its mental health expert on February 2, 2022.

3. The disclosure included Dr. Penn's fee schedule, which clearly states he charges \$1,000 per hour for deposition and trial testimony. A true and correct copy of Dr. Penn's fee schedule is attached as Attachment A.

4. Two weeks later, on February 15, 2022, Plaintiffs served a Subpoena to Testify at a Deposition in a Civil Action directed at Dr. Penn on counsel for CoreCivic.

5. Neither the subpoena nor the transmittal email objected to Dr. Penn's fee or request a lower hourly rate for his testimony.

6. The parties eventually agreed on Tuesday, March 8, 2022 for the deposition.

7. In light of issues Dr. Penn had recently experienced obtaining payment for his deposition testimony in *Jensen, et al. v. Shinn, et al.*, No. CV-12-00601-PHX-ROS, D. Ariz., on February 24, 2022, I reminded Plaintiffs of Dr. Penn's hourly rate and asked that they pay him in advance for the number of hours they anticipated taking for the deposition.

8. On that same date, and in response to my request, Plaintiffs objected for the first time to Dr. Penn's hourly rate, stating they would only agree to pay Dr. Penn \$400 per hour—i.e., 40% of his stated rate.

9. Dr. Penn's hourly rate for other expert work, such as records review, attorney conferences, and preparation of his report is \$500 per hour. (Attachment A.)

10. Plaintiffs are paying their expert economist, Steven Schwartz, Ph.D., who holds a Ph.D. from the University of Maryland, \$595 per hour for all work he performs in this matter.

11. Plaintiffs also objected to pre-paying Dr. Penn for his deposition and stated that they intended to take at least five hours for the deposition but reserved the right to take the full seven hours allowed by Rule 30.

12. At least some of the attorneys representing Plaintiffs in this case also represent the plaintiffs in *Jensen, et al. v. Shinn, et al.*, No. CV-12-00601-PHX-ROS, D. Ariz., in which the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) retained Dr. Penn as its mental health expert. Struck Love Bojanowski & Acedo, PLC represents ADCRR in that case.

13. There, the plaintiffs deposed Dr. Penn on October 26 and November 17, 2021, only objecting months after the depositions to his hourly rate, which was also \$1,000.

14. The issue still has not been resolved, and Dr. Penn has not been paid for his time in that case.

15. After reviewing Plaintiffs' cited legal authority in support of their objection to Dr. Penn's hourly rate in this case, performing my own research, and conferring with Dr. Penn, I informed Plaintiffs that CoreCivic would withdraw its request for pre-payment on March 6, 2022 but requested that Plaintiffs agree to pay Dr. Penn's full hourly fee within 30 days after the deposition.

16. I highlighted Dr. Penn's qualifications and cited cases in which similarly qualified experts were paid the same rate or higher for their deposition testimony and informed Plaintiffs that if they would agree to pay Dr. Penn's full fee within 30 days after the deposition, CoreCivic would not object to producing Dr. Penn for his deposition on March 8, 2022.

17. If they would not, however, I stated that the deposition would need to be postponed pending resolution of this issue with the Court.

18. Plaintiffs responded on March 7, 2022. Although they would not agree to postpone the deposition until the fee issue is resolved, upon further negotiation, they did agree to promptly pay Dr. Penn \$595 per hour upon receipt of a W-9 and an invoice as an undisputed portion of his fee, with the parties to litigate payment of the remainder of the fee.

19. Dr. Penn is charging CoreCivic the same rate for any testimony he may give at trial as he is charging Plaintiffs for any testimony he may give in his deposition—i.e., \$1,000 per hour. (Attachment A.)

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of March, 2022 in Chandler, Arizona.

s/ Jacob B. Lee

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# **ATTACHMENT A**

## **Joseph V. Penn, MD, CCHP, FAPA Fee Schedule**

RE:

Client Name/Case

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I. Fee schedule for providing expert services to your firm with reference to the above name matter:

- (A) Review of depositions, records, report, or other data.....500.00 pr/hr
- (B) Conference with attorney or others as required.....500.00 pr/hr
- (C) Psychiatric consultation with written report.....500.00 pr/hr
- (D) Research.....500.00 pr/hr
- (E) Deposition – testimony.....1,000.00 pr/hr
- (F) Testimony in court.....1,000.00 pr/hr

II. Billing for out-of-town cases will be \$4,000.00 for a minimum of 4 hours and \$8,000.00 for 8 hours per day, and will include any/all travel time. Any additional time will be billed at \$1,000.00 per hour. Travel expenses, meals and accommodations will be computed at actual rate.

III. It is hereby specifically agreed that payment of all fees and expenses as outlined herein are the full responsibility of the undersigned attorney and firm of which he/she may be a member, and payment is not contingent on any verdict or settlement of the above captioned matter.

IV. It is also specifically agreed that the undersigned attorney and firm will be responsible for securing funds in advance for depositions (and not subsequent to the deposition).

V. A retainer amount of \$5,000.00 payable to “*Joseph Penn MD and Forensic Associates, LLC*” is due before starting any work in this matter. Dr. Penn will submit invoices periodically and will notify the undersigned attorney/firm if an additional retainer amount is necessary.

VI. Please sign one copy of this agreement and return to this office. The original is for your records.

Joseph Penn MD and Forensic Associates, LLC  
206 A S. Loop 336 W. #158  
Conroe, Texas 77304

Agreed & Accepted by

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Attorney for firm

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Name of law firm

Date\_\_\_\_\_